

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
CEDAR RAPIDS DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

OLIVIA ACOSTA-DELGADO,

Defendant.

No. 07-CR-38-LRR

FINAL JURY INSTRUCTIONS

Ladies and Gentlemen of the Jury:

The instructions I gave you at the beginning of the trial and during the trial remain in effect. I will now give you some additional instructions.

You must, of course, continue to follow the instructions I gave you earlier, as well as those I give you now. You must not single out some instructions and ignore others, because all are important. This is true even though some of those I gave you at the beginning of and during trial are not repeated here.

The instructions I am about to give you now are in writing and will be available to you in the jury room. I emphasize, however, that this does not mean they are more important than my earlier instructions. Again, all instructions, whenever given and whether in writing or not, must be followed.

INSTRUCTION NUMBER /

In considering these instructions, attach no importance or significance whatsoever to the order in which they are given.

INSTRUCTION NUMBER 2

Neither in these instructions nor in any ruling, action or remark that I have made during this trial have I intended to give any opinion or suggestion as to what the facts are or what your verdicts should be.

INSTRUCTION NUMBER 3

It is your duty to find from the evidence what the facts are. You will then apply the law, as I give it to you, to those facts. You must follow my instructions on the law, even if you thought the law was different or should be different.

Do not allow sympathy or prejudice to influence you. The law demands of you just verdicts, unaffected by anything except the evidence, your common sense and the law as I give it to you.

INSTRUCTION NUMBER 4

I have mentioned the word "evidence." The "evidence" in this case consists of the following: the testimony of the witnesses, including the defendant, the stipulations of the parties and the documents and other things received as exhibits.

You may use reason and common sense to draw deductions or conclusions from facts which have been established by the evidence in the case.

Certain things are not evidence. I shall list those things again for you now:

1. Statements, arguments, questions and comments by the lawyers are not evidence.
2. Anything that might have been said by jurors or the attorneys during the jury selection process is not evidence.
3. Objections are not evidence. The parties have a right to object when they believe something is improper. You should not be influenced by the objection. If I sustained an objection to a question, you must ignore the question and must not try to guess what the answer might have been.
4. Testimony that I struck from the record, or told you to disregard, is not evidence and must not be considered.
5. Anything you saw or heard about this case outside the courtroom is not evidence.

During the trial, documents were referred to but they were not admitted into evidence and, therefore, they will not be available to you in the jury room during deliberations.

Finally, if you were instructed that some evidence was received for a limited purpose only, you must follow that instruction.

INSTRUCTION NUMBER 5

There are two types of evidence from which a jury may properly find the truth as to the facts of a case: direct evidence and circumstantial evidence. Direct evidence is the evidence of the witness to a fact or facts of which they have knowledge by means of their senses. The other is circumstantial evidence—the proof of a chain of circumstances pointing to the existence or nonexistence of certain facts. The law makes no distinction between direct and circumstantial evidence. You should give all evidence the weight and value you believe it is entitled to receive.

INSTRUCTION NUMBER 6

The jurors are the sole judges of the weight and credibility of the testimony and the value to be given to each witness, including the defendant, who has testified in this case. In deciding what the facts are, you may have to decide what testimony you believe and what testimony you do not believe. You may believe all of what a witness said, or only part of it or none of it.

In deciding what testimony to believe, consider the witness's intelligence, the opportunity the witness had to have seen or heard the things testified about, the witness's memory, any motives that witness may have for testifying a certain way, the manner of the witness while testifying, whether that witness said something different at an earlier time, the general reasonableness of the testimony and the extent to which the testimony is consistent with any evidence that you believe.

In deciding whether or not to believe a witness, keep in mind that people sometimes hear or see things differently and sometimes forget things. You need to consider, therefore, whether a contradiction is an innocent misrecollection or lapse of memory or an intentional falsehood, and that may depend on whether it has to do with an important fact or only a small detail.

INSTRUCTION NUMBER 7

In a previous instruction, I instructed you generally on the credibility of witnesses. I now give you this further instruction on how the credibility of a witness can be "impeached" and how you are to consider the testimony of certain witnesses.

A witness may be discredited or impeached by contradictory evidence; by showing that the witness testified falsely concerning a material matter; by showing the witness has a motive to be untruthful; or by evidence that at some other time the witness has said or done something, or has failed to say or do something, that is inconsistent with the witness's present testimony.

You have heard evidence that [REDACTED] has an arrangement with the government under which he received consideration on his immigration status for providing information to the government. This witness's testimony was received in evidence and may be considered by you. You may give this witness's testimony such weight as you think it deserves. Whether or not his information or testimony may have been influenced by receiving consideration on his immigration status is for you to determine.

You have heard evidence that Celia Mendoza-Pizano pled guilty to a crime which arose out of the same events for which the defendant is on trial here. You must not consider that guilty plea as any evidence of this defendant's guilt.

You should judge the testimony of the defendant in the same manner as you judge the testimony of any other witness.

INSTRUCTION NUMBER 8

The government and the defendant have stipulated—that is, they have agreed— that certain facts are as counsel have stated. You must, therefore, treat those facts as having been proved.

INSTRUCTION NUMBER 9

You have heard testimony that the defendant made statements to law enforcement officers in this case. It is for you to decide:

- (1) whether the defendant made the statements and ,
- (2) if so, how much weight you should give to them.

In making these two decisions, you should consider all of the evidence, including the circumstances under which the statements may have been made.

INSTRUCTION NUMBER 10

Exhibits have been admitted into evidence and are to be considered along with all of the other evidence to assist you in reaching your verdicts. You are not to tamper with the exhibits or their contents, and each exhibit should be returned into open court, along with your verdicts, in the same condition as it was received by you.

INSTRUCTION NUMBER 11

The Indictment in this case charges that the defendant committed four separate crimes: possession of false identification documents (Count 1); selling a social security card (Count 2); aggravated identity theft (Count 3); and conspiracy (Count 4). The defendant has pleaded not guilty to the crimes with which she is charged.

As I told you at the beginning of trial, an Indictment is simply an accusation. It is not evidence of anything. To the contrary, the defendant is presumed to be innocent. Thus the defendant, even though charged, begins the trial with no evidence against her. The presumption of innocence alone is sufficient to find a defendant not guilty and can be overcome only if the government proves, beyond a reasonable doubt, each essential element of the crimes charged.

Keep in mind that each count charges a separate crime. You must consider each count separately and return a separate verdict for each count.

There is no burden upon the defendant to prove that she is innocent.

INSTRUCTION NUMBER 12

Count 1 of the Indictment charges the defendant with the crime of possession of false identification documents with the intent to defraud the United States. This offense has three essential elements, which are:

- One,* on or about October 3, 2006, the defendant knowingly possessed an identification document (a California birth certificate in the name of "Jose Gomez, Jr." and/or a social security card in the name of "Jose Hernandez Gomez, Jr.," bearing the last four digits "0143");
- Two,* the defendant knew that one or both of the identification documents had not been lawfully issued for her use; and
- Three,* the defendant intended one or both of the identification documents would be used to defraud the United States by assisting others to obtain employment in violation of the laws and regulations of the United States.

If you unanimously find each of these essential elements has been proved beyond a reasonable doubt, then you must find the defendant guilty of the crime charged under Count 1; otherwise you must find the defendant not guilty of the crime charged under Count 1.

INSTRUCTION NUMBER 13

You are instructed as a matter of law that persons seeking employment in the United States are required to provide identification to establish their true identities and to attest to their lawful presence within the United States, as part of the employment application process. A social security card and a certificate evidencing birth in the United States are two of the documents that the law provides may be used as evidence of identity and lawful presence within the United States for purposes of seeking lawful employment in the United States.

INSTRUCTION NUMBER 14

Count 2 of the Indictment charges the defendant with the crime of selling a social security card. This offense has two essential elements, which are:

- One,* on or about October 3, 2006, the defendant knowingly sold a social security card in the name of "Jose Hernandez Gomez, Jr.," and bearing the last four digits "0143;" and
- Two,* the card had been, or appeared to have been, issued by the Commissioner of Social Security.

If you unanimously find each of these essential elements has been proved beyond a reasonable doubt, then you must find the defendant guilty of the crime charged under Count 2; otherwise you must find the defendant not guilty of the crime charged under Count 2.

INSTRUCTION NUMBER 15

Count 3 of the Indictment charges the defendant with the crime of knowingly possessing, transferring or using without lawful authority the means of identification of another. This offense has four essential elements, which are:

- One,* on or about October 3, 2006, the defendant knowingly possessed, transferred or used;
- Two,* the “means of identification” of another person;
- Three,* without lawful authority; and
- Four,* during and in relation to one or both of the offenses charged in Count 1 or Count 2.

If all of the essential elements have been proved beyond a reasonable doubt as to the defendant, then you must find the defendant guilty of Count 3, otherwise you must find the defendant not guilty of Count 3.

INSTRUCTION NUMBER 16

You are instructed that the term "means of identification" includes any name or number that may be used, alone or in conjunction with any other information, to identify a specific individual. This term includes any name or social security number.

INSTRUCTION NUMBER 17

The defendant may also be found guilty of any of the offenses charged in Counts 1, 2, or 3, even if she personally did not do every act constituting the offense charged, if she aided and abetted the commission of any such offense.

In order to have aided and abetted the commission of a crime a person must:

- (1) Have known the crime was being committed or going to be committed; and
- (2) Have knowingly acted in some way for the purpose of causing, encouraging or aiding the commission of the crime.

For you to find the defendant guilty of the crime charged in Counts 1, 2, or 3 by reason of aiding and abetting, the government must prove beyond a reasonable doubt that all of the essential elements of the crime under consideration by you were committed by some person or persons and that the defendant aided and abetted the commission of that crime.

You should understand that merely being present at the scene of an event, or merely acting in the same way as others or merely associating with others, does not prove that a person has become an aider and abettor. A person who has no knowledge that a crime is being committed or about to be committed, but who happens to act in a way which advances some offense, does not thereby become an aider and abettor.

INSTRUCTION NUMBER 18

Count 4 of the Indictment charges the defendant with conspiracy to commit several false identification crimes. This offense has four essential elements, which are:

One, between at least July of 2006 and until at least April of 2007, the exact dates being unknown, two or more persons reached an agreement or came to an understanding to commit one or more of the following offenses:

Object 1: To knowingly possess a false identification document with the intent to defraud the United States;

Object 2: To purchase or sell a social security card that had been, or appeared to have been, issued by the Commissioner of Social Security; and/or

Object 3: To possess documents prescribed by law as evidence of authorized stay or employment in the United States, knowing the documents had been unlawfully obtained;

Two, the defendant voluntarily and intentionally joined in the agreement or understanding, either at the time it was first reached or at some later time while it was still in effect;

Three, at the time the defendant joined in the agreement or understanding, she knew the purpose of the agreement or understanding; and

Four, while the agreement or understanding was in effect, a person or persons who had joined in the agreement knowingly committed one or more of the following acts:

1. A cooperating individual obtained a phone number for "Olivia," a purported source for identity documents from "Cesar."

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INSTRUCTION NUMBER 18 (Cont'd)

2. On September 13, 2006, a phone call was made by a cooperating individual in Cedar Rapids to "Olivia." The cooperating individual advised "Olivia" he was interested in purchasing identity documents to gain employment.
3. "Olivia" advised the cooperating individual that she could get a valid birth certificate and a valid social security card and she would sell them to the cooperating individual for \$600.00. Arrangements were made to meet with "Olivia" to make a down payment on the documents to be purchased from "Olivia."
4. On September 14, 2006, the cooperating individual met with the defendant in Toledo, Iowa.
5. During the meeting referenced in paragraph 4, the defendant showed the cooperating individual samples of what appeared to be a valid birth certificate and social security card. The defendant then accepted \$300.00 as a down payment on documents to be acquired for the cooperating individual.
6. Subsequent to the meeting referenced in paragraphs 4 and 5, the defendant gave the \$300.00 to Celia Pizano-Mendoza.
7. Prior to September 20, 2006, a United States Postal Service Express mail package was sent to Iowa from California. The package was addressed to "Celia Mendoza" in Marshalltown, Iowa, and arrived in Iowa on about on September 20, 2006. The package contained a certified copy of a California birth certificate and a valid unsigned social security card for a female with the last name "Garcia."
8. Prior to September 22, 2006, a United States Postal

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INSTRUCTION NUMBER 18 (Cont'd)

Service Express mail package was sent to Iowa from California. The package was addressed to "Celia Mendoza" in Marshalltown, Iowa, and arrived in Iowa on about on September 22, 2006. The package contained a certified copy of a California birth certificate and a valid signed social security card for a male with the last name "Villa."

9. Prior to September 25, 2006, a United States Postal Service Express mail package was sent to Iowa from California. The package was addressed to "Celia Mendoza" in Marshalltown, Iowa, and arrived in Iowa on about September 25, 2006. The package contained a certified copy of a California birth certificate and a certified copy of a California marriage license for a female with the last name "Suarez." The package also contained a valid signed social security card for a female with the last name "Valles."
10. On September 30, 2006, the cooperating individual received a call from "Olivia." "Olivia" advised she had received identity documents for the cooperating individual and would like to meet to complete the transaction.
11. On October 3, 2006, the cooperating individual met with the defendant in Toledo, Iowa. The defendant took receipt of \$300.00 as final payment for the identity documents she intended to sell to the cooperating individual.
12. During the meeting referenced in paragraph 11, the defendant delivered a California birth certificate and a social security card, with the last four digits "0143," for a male with the name "Jose Gomez, Jr."
13. Subsequent to the meeting referenced in paragraphs 11 and

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INSTRUCTION NUMBER 18 (Cont'd)

12, the defendant gave the \$300.00 to Celia Pizano-Mendoza.

14. On December 11, 2006, a second cooperating individual spoke by phone from Cedar Rapids with "Celia." The source inquired about acquiring identity documents for purposes of gaining employment.

If you unanimously find each of these essential elements has been proved beyond a reasonable doubt, then you must find the defendant guilty of the crime charged under Count 4; otherwise you must find the defendant not guilty of the crime charged under Count 4.

INSTRUCTION NUMBER 19

To assist you in determining whether there was an agreement or understanding to commit the crime of possession of a false identification document with the intent to defraud the United States (Object 1), you are advised that the elements of this crime are as follows:

- One,* the knowing possession of an identification document;
- Two,* with knowledge that the identification document had not been lawfully issued for use of the possessor; and
- Three,* the possessor intended the identification document would be used to defraud the United States by assisting others to obtain employment in violation of the laws and regulations of the United States.

Keep in mind that Count 4 of the Indictment charges a *conspiracy* to commit the crime of possession of a false identification document with the intent to defraud the United States, and does not require the government to prove that the crime of possession of a false identification document with the intent to defraud the United States, was actually committed.

INSTRUCTION NUMBER 20

To assist you in deciding whether there was an agreement or understanding to commit the crime of purchasing or selling a social security card (Object 2), you are advised that the elements of that crime are as follows:

One, the purchase or sale of a social security card; and

Two, that had been, or appeared to have been, issued by the Commissioner of Social Security.

Keep in mind that Count 4 of the Indictment charges a *conspiracy* to commit the crime of purchasing or selling a social security card, and does not require the government to prove that the crime of purchasing or selling a social security card, was actually committed.

INSTRUCTION NUMBER 21

To assist you in deciding whether there was an agreement or understanding to commit the crime of possession of a document prescribed by law as evidence of authorized stay or employment in the United States, knowing the documents had been unlawfully obtained (Object 3), you are advised that the elements of that crime are :

One, the knowing possession of an identification document;

Two, knowing the document had been unlawfully obtained; and

Three, the document is the type prescribed by statute or regulation as evidence of authorized stay or employment in the United States.

Keep in mind that Count 4 of the Indictment charges a *conspiracy* to commit the crime of possession of a document prescribed by law as evidence of authorized stay or employment in the United States, knowing the document had been unlawfully obtained, and does not require the government to prove that the crime of possession of a document prescribed by law as evidence of authorized stay or employment in the United States, knowing the document had been unlawfully obtained, was actually committed.

INSTRUCTION NUMBER 22

In considering whether the government has met its burden of proving the offense of conspiracy as alleged in Count 4 of the Indictment, you are further instructed as follows:

The government must prove that the defendant reached an agreement or understanding with at least one other person. The "other person" cannot be a law enforcement officer or confidential informant. It makes no difference whether that person is a defendant or is named in the Indictment.

The "agreement or understanding" need not be an express or formal agreement or be in writing or cover all the details of how it is to be carried out. Nor is it necessary that members have directly stated between themselves the details or purpose of the scheme.

You should understand that merely being present at the scene of an event, or merely acting in the same way as others or merely being associated with others, does not prove that a person has joined in an agreement or understanding. A person who has no knowledge of a conspiracy but who happens to act in a way which advances some purpose of one, does not thereby become a member.

But a person may join in an agreement or understanding, as required by this element, without knowing all the details of the agreement or understanding, and without knowing who all the other members are. Further, it is not necessary that a person agree to play any particular part in carrying out the agreement or understanding. A person may become a member of a conspiracy even if that person agrees to play only a minor part in the conspiracy, as long as that person has an understanding of the unlawful nature of the plan and voluntarily and intentionally joins in it.

You must decide, after considering all of the evidence, whether the conspiracy alleged in the count in the Indictment under consideration by you existed. If you find that

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INSTRUCTION NUMBER 22 (Cont'd)

an alleged conspiracy did exist, you must also decide whether the defendant voluntarily and intentionally joined the conspiracy, either at the time it was first formed or at some later time while it was still in effect. In making that decision, you must consider only evidence of the defendant's own actions and statements. You may not consider actions and pretrial statements of others except to the extent that pretrial statements of others describe something that had been said or done by the defendant.

It is not necessary that the act done in furtherance of the conspiracy be in itself unlawful. It may be perfectly innocent in itself.

It is not necessary that the defendant have personally committed the act, known about it, or witnessed it. It makes no difference which of the conspirators did the act. This is because a conspiracy is a kind of "partnership" so that under the law each member is an agent or partner of every other member and each member is bound by or responsible for the acts of every other member done to further their scheme.

It is not necessary that the Government prove, beyond a reasonable doubt, that more than one act was done in furtherance of the conspiracy. It is sufficient if the Government proves beyond a reasonable doubt, *one* such act; but in that event, in order to return a verdict of guilty, you must unanimously agree upon which act was done.

It is not necessary for the Government to prove that the conspirators actually succeeded in accomplishing their unlawful plan.

Also keep in mind that the Indictment charges that the conspiracy involved in Count 4 had three objects, that is, that the defendant conspired to commit separate crimes. You are instructed that it is not necessary for the government to prove a conspiracy to commit all the objects of the conspiracy. It would be sufficient if the government proves, beyond a reasonable doubt, a conspiracy to commit *one* of the objects of the conspiracy. However, in that event, in order to return a verdict of guilty of the conspiracy, you must

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INSTRUCTION NUMBER 22 (Cont'd)

unanimously agree upon *which* one or more of the crimes was the object of that conspiracy.

If you find beyond a reasonable doubt that the conspiracy existed and that the defendant was one of its members, then you may consider acts knowingly done and statements knowingly made by the defendant's co-conspirators during the existence of the conspiracy and in furtherance of it as evidence pertaining to the defendant even though they were done or made in the absence of and without the knowledge of the defendant. This includes acts done or statements made before the defendant joined the conspiracy, because a person who knowingly, voluntarily and intentionally joins an existing conspiracy is responsible for all of the conduct of the co-conspirators from the beginning of the conspiracy.

INSTRUCTION NUMBER 23

The law recognizes several kinds of “possession.” A person may have actual possession or constructive possession. A person may have sole or joint possession.

A person who knowingly has direct physical control over a thing, at a given time, is in “actual possession” of it.

A person who, although not in actual possession, has both the power and intention at a given time to exercise dominion or control over a thing, either directly or through another person or persons, is then in “constructive possession” of it.

If one person alone has actual or constructive possession of a thing, possession is “sole.” If two or more persons share actual or constructive possession of a thing, possession is “joint.”

Whenever the word “possession” is used in these instructions, it includes “actual” as well as “constructive” possession and also “sole” as well as “joint” possession.

INSTRUCTION NUMBER 24

You will note the Indictment charges that the offenses were committed “between at least” or “on about” certain dates. The government need not prove with certainty the exact date or the exact time period of an offense charged. It is sufficient if the evidence established that an offense occurred within a reasonable time of the date or period of time alleged in the Indictment.

INSTRUCTION NUMBER 25

A reasonable doubt is a doubt based upon reason and common sense, and not the mere possibility of innocence. A reasonable doubt is the kind of doubt that would make a reasonable person hesitate to act. Proof beyond a reasonable doubt, therefore, must be proof of such a convincing character that a reasonable person would not hesitate to rely and act upon it. However, proof beyond a reasonable doubt does not mean proof beyond all possible doubt.

INSTRUCTION NUMBER 26

Intent may be proven by circumstantial evidence. It rarely can be established by other means. While witnesses may see or hear and thus be able to give direct evidence of what a person does or fails to do, there can be no eyewitness account of the state of mind with which the acts were done or omitted. But what a defendant does or fails to do may indicate intent or lack of intent to commit an offense.

You may consider it reasonable to draw the inference and find that a person intends the natural and probable consequences of acts knowingly done, but you are not required to do so. As I have said, it is entirely up to you to decide what facts to find from the evidence.

INSTRUCTION NUMBER 27

An act is done “knowingly” if the defendant is aware of the act and does not act through ignorance, mistake or accident. The government is not required to prove that the defendant knew that her acts or omissions were unlawful. You may consider evidence of the defendant’s words, acts or omissions along with all the other evidence, in deciding whether the defendant acted knowingly.

INSTRUCTION NUMBER 28

Throughout the trial, you have been permitted to take notes. Your notes should be used only as memory aids, and you should not give your notes precedence over your independent recollection of the evidence.

In any conflict between your notes, a fellow juror's notes and your memory, your memory must prevail. Remember that notes sometimes contain the mental impressions of the note taker and can be used only to help you recollect what the testimony was. At the conclusion of your deliberations, your notes should be left in the jury room for destruction.

INSTRUCTION NUMBER 29

In conducting your deliberations and returning your verdicts, there are certain rules you must follow. I shall list those rules for you now.

First, when you go to the jury room, you must select one of your members as your foreperson. That person will preside over your discussions and speak for you here in court.

Second, it is your duty, as jurors, to discuss this case with one another in the jury room. You should try to reach an agreement if you can do so without violence to individual judgment, because each verdict—whether guilty or not guilty—must be unanimous.

Each of you must make your own conscientious decision, but only after you have considered all the evidence, discussed it fully with your fellow jurors and listened to the views of your fellow jurors.

Do not be afraid to change your opinions if the discussion persuades you that you should. But do not come to a decision simply because other jurors think it is right or simply to reach a verdict.

Third, if the defendant is found guilty, the sentence to be imposed is my responsibility. You may not consider punishment in any way in deciding whether the government has proved its case beyond a reasonable doubt.

Fourth, if you need to communicate with me during your deliberations, you may send a note to me through the Court Security Officer, signed by one or more jurors. I will respond as soon as possible either in writing or orally in open court. Remember that you should not tell anyone—including me—how your votes stand numerically.

Finally, your verdicts must be based solely on the evidence and on the law which I have given to you in my instructions. Each verdict, whether guilty or not guilty, must be unanimous. Nothing I have said or done is intended to suggest what your verdicts should be—that is entirely for you to decide.

INSTRUCTION NUMBER 29

Attached to these instructions you will find four Verdict Forms. These Verdict Forms are simply the written notice of the decisions that you reach in this case. The answers to these Verdict Forms must be the unanimous decisions of the jury.

You will take the Verdict Forms to the jury room, and when you have completed your deliberations and each of you has agreed on answers to the Verdict Forms your foreperson will fill out the Verdict Forms, sign and date them and advise the Court Security Officer that you are ready to return to the courtroom.

Finally, members of the jury, take this case and give it your most careful consideration, and then without fear or favor, prejudice or bias of any kind, return such verdicts as accord with the evidence and these instructions.

September 19, 2007

DATE

Linda R. Reade

LINDA R. READE
CHIEF JUDGE, U.S. DISTRICT COURT
NORTHERN DISTRICT OF IOWA